

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBERT DWAYNE HARVEY,

2:13-CV-01425-PK

Petitioner,

ORDER

v.

JERI TAYLOR, Superintendent,

Respondent.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#42) on October 13, 2015, in which he recommends the Court deny Petitioner Robert Dwayne Harvey's Petition (#2) for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, dismiss this matter with prejudice, and grant a certificate of appealability on the issue of whether Petitioner's counsel rendered constitutionally deficient performance when she failed to secure an expert to testify on his behalf at trial on the

subject of child memory. Petitioner filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *Dawson v. Marshall*, 561 F.3d 930, 932 (9<sup>th</sup> Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*).

In his Objections Petitioner reiterates the arguments contained in his Petition and Memorandum in Support of Petition. This Court has carefully considered Petitioner's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

#### CONCLUSION

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#42), **DENIES** the Petition (#2) for Writ of Habeas Corpus, **DISMISSES** this matter **with prejudice**, and **GRANTS** a certificate of appealability on the issue of whether Petitioner's counsel rendered constitutionally deficient performance when she

failed to secure an expert to testify on his behalf at trial on the subject of child memory.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of December, 2015.

A handwritten signature in cursive script, appearing to read "Anna J. Brown", is written above a horizontal line.

ANNA J. BROWN  
United States District Judge